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14 situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

RANDY LLOYD, an individual; EDDIE
ALVARADO, an individual; on behalf of
themselves and all others similarly situated and
the general public,

Plaintiffs,

v.

BERRY ROOFING, INC., a California
corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. CVRI2300461

[Assigned For All Purposes To the Hon.
Harold W. Hopp, Dept. 1]

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: July 9, 2024

Time: 8:30 a.m.

Dept: 1

1 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 9, 2024, at 8:30 a.m., or as soon thereafter as the
3 matter may be heard in Department 1 of the above-entitled court, located at the Riverside
4 Historic Courthouse, 4050 Main Street, Riverside, California 92501, Plaintiffs Randy Lloyd and
5 Eddie Alvarado (“Plaintiffs”) will hereby move the Court for final approval of a class action
6 settlement, entry of a final Order and Judgment, approval of Plaintiffs’ enhancement awards,
7 approval of Plaintiffs’ attorneys’ fees and costs, and approval of the settlement administration
8 expenses.

9 This Motion is based upon this Notice, the attached Memorandum of Points and
10 Authorities, the Declarations of Aaron Bartz, Walter Haines, Randy Lloyd, Edward Alvarado,
11 and Jarrod Salinas, all documents and records on file in this action, and on such other further oral
12 and documentary evidence as may be given at the hearing on this Motion.

13 Dated: June 12, 2024

BARTZ LAW GROUP, APC

16 //Aaron Bartz//

17 Aaron A. Bartz

18 Attorneys for Plaintiffs RANDY LLOYD and
19 EDDIE ALVARADO and all others similarly
20 situated
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1 **I. INTRODUCTION**

2 This class action and PAGA settlement is sought on behalf of approximately 142 current
3 and former employees who worked in California for Defendant Berry Roofing, Inc.
4 (“Defendant”) between January 30, 2019 and December 31, 2023.

5 Pursuant to the preliminary approval order, the notice of class settlement and related
6 settlement documents were mailed to the class on April 10, 2024. (*See* Exhibit A to Declaration
7 of Jarrod Salinas (“Salinas Decl.”), ¶ 5). Not one class member has opted out of the settlement.
8 No class members objected to the settlement.

9 This case arises out of Plaintiffs’ allegations that Defendant violated California’s wage
10 and hour laws, including failing to pay all wages owed and overtime, failing to authorize and
11 permit meal and rest periods, failing to reimburse class members for necessary business
12 expenses, failing to properly maintain and submit wage statements, and waiting time penalties.

13 There is no claim form requirement, and each member of the class is entitled to receive
14 compensation, with no reversion to the Defendant. The gross settlement is \$225,000. The net
15 amount to be paid to class members (after payment of class counsel fees and expenses,
16 settlement administration costs, Private Attorneys General Act (“PAGA”) penalties, and
17 Plaintiffs’ enhancement awards), is approximately \$110,542.83. Each class member’s share of
18 the settlement is based on each of their eligible number of pay periods, and shall receive, on
19 average, approximately \$778. The minimum payout is approximately \$19.95, and the maximum
20 is approximately \$5,106.27.
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1 **II. THE SETTLEMENT**

2 The class members entitled to the settlement fund are all current and former employees
3 who worked for Defendant between January 30, 2019 and December 31, 2023. Based upon
4 current estimates, there are approximately 142 class members.¹

5 The settlement fund is all in (except for the employer's share of payroll taxes, which
6 Defendant shall pay in addition to the \$225,000 settlement), there is no claim form requirement,
7 and no residual will revert to Defendant. No class members have opted out or objected to the
8 settlement, so settlement checks will be distributed to all class members. In the event a class
9 member does not negotiate his or her settlement check, the claims administrator will re-distribute
10 the unclaimed funds on a pro rata basis to those class members who cashed their checks.

11 The payment to the Settlement Class Members will be characterized eighty percent
12 interest and penalties, and twenty percent wages. The administrator will issue W-2 statements
13 for the wage portion of the settlement, and a form 1099 for all amounts paid as penalties and
14 interest.
15

16 Based upon Class Counsel's independent analysis and investigation in this matter, the
17 Settlement Class will be compensated based on each member's respective number of workweeks
18 worked during the Class Period. The total number of workweeks is 5,542.

19 Based on the settlement terms, there will be an approximate net settlement fund of
20 **\$110,542.83**. In exchange for their payment, the class will release Defendant from any and all
21 claims, known or unknown, contingent or accrued, arising out of the operative facts alleged in
22 the lawsuit. The named Plaintiffs will, in addition to releasing claims alleged in the lawsuit, give
23 a general release of all claims pursuant to Civil Code section 1542.
24

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27 ¹ At preliminary approval, Defendant estimated that there were 125 class
28 members. Because the class period and data was incomplete, the number of class members rose slightly.

1 The all-in settlement fund will also include all of the attorneys' fees and costs allowed by
2 this Court. The attorneys' fees shall not exceed one-third of the \$225,000 settlement fund, or
3 \$75,000. Defendant will also pay class counsel's costs, which are \$8,414, as well as settlement
4 administration costs of \$6,043.17, out of the common fund.

5 The PAGA allocation of the settlement is \$10,000, of which \$7,500 (75%) will be
6 distributed to the Labor Workforce and Development Agency (LWDA), with the remaining
7 portion - \$2,500 (25%) - going to PAGA Members (all allegedly aggrieved persons who worked
8 for Defendant at any time from November 22, 2021, through December 31, 2023).

9 The settlement also includes Plaintiffs' class representative enhancements. Based on
10 Plaintiffs' work in connection with this case, including connecting Class Counsel with other
11 witnesses, meeting and conferring with Class Counsel regarding legal strategies, and assisting
12 with developing the claims and theories in this case, and attending Mediation, Plaintiffs
13 collectively seek \$15,000 (\$7,500 each).

14
15 **In summary, the settlement fund is allocated as follows:**

- 16 (1) Net settlement fund: \$110,542.83;
17 (2) Attorney's fees and costs: \$75,000 in attorneys' fees and \$8,414 in costs;
18 (3) Settlement administrator expenses of \$6,043.17;
19 (4) PAGA payment: \$10,000 (7,500 to the LWDA, and \$2,500 to aggrieved
20 employees);
21 (5) Class representative enhancement: 7,500 for each named Plaintiff.

22
23 **III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE IN THIS CASE**

24 Pursuant to both state and federal rules of civil procedure, "a class action shall not be
25 dismissed or compromised without the approval of the court, and notice of the proposed
26 dismissal or compromise shall be given to all members of the class in such manner as the Court
27 directs" (Cal. Civ. Code § 1781(f); *see also* Fed. R. Civ. P. 23(e).)

28 To prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a
class action requires court approval. (*See Malibu Outrigger Bd. of Governors v. Superior Court*

(1980) 103 Cal. App. 3d 573, 578-579.) The purpose of the requirement is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating parties. (*See Officers for Justice v. Civil Service Comm.* (9th Cir. 1982) 688 F.2d 615, 625, cert. denied 459 U.S. 1217.) To determine whether to grant final approval to a proposed class action under Civil Code section 382, the Court's overriding concern is whether the proposed settlement is "fair, adequate, and reasonable." (*Dunk v. Ford Motor Company* (1996) 48 Cal. App. 4th 1794, 1801 (quoting *Officers of Justice, supra*, 688 F.2d at 623-624).) The settlement of a class action follows in three stages: (1) preliminary approval of the proposed settlement; (2) notice to class members; and (3) final approval or fairness hearing at which evidence and argument may be heard on the fairness of the settlement. Here, this Court already preliminarily approved the settlement, notice was provided to all class members, no class members have objected, and no class members have opted out.

A. The Settlement is Presumed Fair

A presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining, (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently, (3) counsel is experienced in similar litigation, and (4) the percentage of objectors is small. (*See Dunk, supra*, 48 Cal. App. 4th at 1802.) A court may also consider relevant factors such as the strength of the plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant and the reaction of the class members to the proposed settlement. (*See Officers of Justice, supra*, 688 F.2d at 624.) "This list is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties." (*Dunk, supra*, 48 Cal. App. 4th at 1801.) Moreover, the trial court has broad powers to determine whether a proposed class action settlement is fair. (*See Mallick v. Superior Court* (1979) 89 Cal. App. 3d 434.)

B. The Settlement Was Reached Through Arm's Length Negotiations

This settlement is the result of arms-length and hard-fought negotiations. Defendant has denied and continues to deny all of the claims and contentions alleged in this case. Nonetheless,

1 Defendant has agreed to settle this case in the manner and upon the terms and conditions set
2 forth in the Settlement Agreement in order to avoid the expense, inconvenience, and burden of
3 further legal proceedings, and the uncertainties of trial and appeals.

4 Defendant has denied and continues to deny all of the claims and contentions alleged in
5 this case. Nonetheless, Defendant has agreed to settle this case in the manner and upon the terms
6 and conditions set forth in the Settlement Agreement in order to avoid the expense,
7 inconvenience, and burden of further legal proceedings, and the uncertainties of trial and
8 possible appeals.

9 Here the litigation has been hard fought and displayed capable and experienced advocacy
10 on both sides. “There is likewise every reason to conclude that settlement negotiations were
11 vigorously conducted at arm’s length and without any suggestion of undue influence.” *In re*
12 *Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. 1379, 1392 (D. AZ 1989).

13 **C. Plaintiffs Conducted Sufficient Investigation and Discovery To Warrant**
14 **Settlement**

15 The stage of the proceedings and the amount of discovery completed are important
16 factors for courts to consider in determining whether a settlement is fair, adequate and
17 reasonable. (*See In re Warner Communications Sec. Lit.* (S.D.N.Y. 1985) 618 F.Supp. 735, 741,
18 *affd.*, 198 F.2d 35 (2d Cir. 1986); *Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D.
19 15, 18, *affd.*, 661 F.2d 939 (9th Cir. 1981).)

20 The agreement to settle did not occur until Class Counsel possessed sufficient
21 information to make an informed judgment regarding the likelihood of success on the merits and
22 the results that could be obtained through further litigation. Class Counsel obtained substantial
23 informal discovery from Defendant, including personnel records, and pay data for Plaintiffs, and
24 over 20,000 lines of payroll data on an Excell spreadsheet for the class. Class Counsel also
25 independently obtained information from several class members in addition to Plaintiffs
26 regarding the claims at issue.

27 Based on the foregoing data and their own independent investigation and evaluation,
28 Class Counsel is of the opinion that the settlement with Defendant for the consideration and on

1 the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the
2 best interest of the class in light of all known facts and circumstances, including the risk of
3 significant delay, defenses asserted by Defendant, and numerous issues raised on appeal and
4 potential appeals down the road. Defendant and its counsel also agree that the settlement is fair
5 and in the best interest of the Settlement Class Members. There can be no doubt that counsel for
6 both parties possessed sufficient information to make an informed judgment regarding the
7 likelihood of success on the merits and the results that could be obtained through further
8 litigation.

9 **D. Class Counsel Is Experienced In Similar Litigation And Endorse The**
10 **Settlement**

11 The view of attorneys advocating for the class is “entitled to significant weight.” (*Fisher*
12 *Bros. v. Cambridge-Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp. 482, 488; *see also Ellis,*
13 *supra*, 87 F.R.D. at 18.) Class counsel has significant experience in class actions and
14 employment litigation, including wage and hour class actions. As such, they are experienced and
15 qualified to evaluate the claims and defenses in this case, and unequivocally support the
16 settlement reached herein. The recovery for the class is fair, reasonable and adequate, and Class
17 Counsel supports the settlement.

18 **E. There Are No Objectors To The Settlement**

19 Significantly, there has not been a single objection to the settlement, and no class
20 members have asked to be excluded from the settlement. This alone is a testament to the fairness
21 and adequacy of the settlement.

22 **F. The Strength of Plaintiffs’ Case, The Amount Offered In Settlement, and**
23 **The Risk, Expense, Complexity, and Duration of Further Litigation Favors**
24 **Settlement**

25 Where both sides face significant uncertainty, the attendant risks favor settlement.
26 (*Hanlon v. Chrysler Comm.* (9th Cir. 1998) 150 F.3d 1011, 1026. Moreover, “[t]he expense and
27 possible duration of the litigation should be considered in evaluating the reasonableness of [a]
28 settlement.” (*In re Mega Financial Corp. Securities Litigation* (9th Cir. 2000) 213 F.3d 454,
458.)

Plaintiffs Randy Lloyd and Eddie Alvarado are former employees working for Defendant. Defendant is a roofing company based in Riverside, California. The operative Complaint alleges claims for 1) Failure to Pay All Wages; 2) Waiting Time Penalties; 3) Failure to Provide Meal Periods; 4) Failure to Authorize and Permit Proper Rest Periods; 5) Failure to Properly Maintain and Submit Itemized Wage Statements; 6) Failure to Reimburse Expenses; 7) Unfair Business Practices; and 9) Violation of Labor Code § 2699 (PAGA). Plaintiffs further allege that they and the Class are entitled to damages, restitution, wages, attorneys' fees, and interest, among other remedies.

Pursuant to Kullar v. Footlocker Retail Inc., 168 Cal. App 4th 116, 118 and Dunk v. Ford Motor Co., (1996) 48 Cal.App.4th 1794, the following describes the settlement's reasonableness. Plaintiffs recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through trial and through any possible appeals. Plaintiffs have also taken into account the uncertainty and risk of denial of motion for class certification and the uncertain outcomes resulting from further litigation, and the difficulties and delays inherent in such litigation.

Based on the foregoing, Plaintiffs have determined that the settlement is a fair, adequate and reasonable settlement and is in the best interests of the Class Members. The reasonable exposure and the reasonable settlement value for each of the alleged claims are as follows:

CLAIM	TOTAL EXPOSURE	SETTLEMENT VALUE
Failure to Pay Wages	\$1,100,000	\$110,000
Meal	\$852,000	\$85,200
Rest	\$947,000	\$47,000
Paystub	\$159,000	\$15,900
Waiting time	\$795,000	\$79,500
Reimbursement	\$200,000	\$20,000

PAGA	\$942,000	\$94,000
TOTAL	\$4,995,000	\$451,600

1. Overtime/Minimum Wage Violations

Labor Code § 510 provides that “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek. . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

Labor Code § 1194 states any employee receiving less than the legal minimum wage is entitled to recover the unpaid balance of the full amount of this minimum wage, including interest thereon, reasonable attorney’s fees, and costs of suit.

Plaintiffs contend that Defendant failed to pay all wages due in numerous respects. *First*, Plaintiffs contend that Defendant’s agreements require Plaintiffs and other class members to work on weekends, and to respond to calls and emails at all times of the day, oftentimes without payment. *Second*, Plaintiffs contend that Defendant’s agreements and policies authorize Defendant to unlawfully deduct sums from Plaintiffs’ and class members’ compensation.

Defendant contends that its payment policies were lawful, and that it paid for all time worked, including to Defendant’s commission-based employees, who were given the freedom to work on their own schedule. Defendant further claims that its commission employees were exempt from overtime and minimum wage requirements.

Plaintiffs and their expert analyzed payroll and time records for the class members and calculated that the total verdict value for this claim is approximately \$1.1 million. Plaintiffs and their expert assumed 5 hours per week of unpaid hours, Plaintiffs’ expert reviewed payroll records for the class, including pay period counts per year, and a weighted average rate of pay. Based on the defenses alleged, as well as fact that the failure to pay wage claims will rest on testimony from Plaintiffs and class members, and documented evidence of such violations is scant, the Plaintiffs placed a reasonable settlement value of the overtime/minimum wage claim at

ten percent of the total verdict value, or **\$110,000**. This valuation takes into consideration Plaintiffs' counsels' analysis of the law, and evidence produced by the Defendant.

2. Meal and Rest Period Claims

a. Meal period liability and damages

Plaintiffs contend that Defendant failed to provide Plaintiffs and class members with a duty-free 30-minute meal period for every five hours of work as is required by Labor Code § 512 and the applicable IWC Wage Order(s) and in violation of *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012). Failure to provide a meal in accordance with the applicable Wage Order(s) results in payment by the employer of one additional hour of pay at the employee's regular rate of pay for each workday that the meal period is not provided. (Labor Code § 226.7.)

In *Brinker, supra*, the California Supreme Court held that “under ... Labor Code § 512, subdivision (a), an employer must relieve the employee of all duty for the designated period, but need not ensure that the employee does no work” during the meal period. *Id.* at 1034. However, “...an employer may not undermine a formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks. *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949, 962–63 (2005); *see also Jaimez v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286, 1304–05 (2010) [proof of common scheduling policy that made taking breaks extremely difficult would show violation]; *Dilts v. Penske Logistics, LLC*, 267 F.R.D. 625, 638 (S.D.Cal.2010) [indicating informal anti-meal-break policy "enforced through 'ridicule' or 'reprimand'" would be illegal].) Defendant also cannot create “incentives to forego, or otherwise encourage[] the skipping of legally protected breaks.” *Brinker, supra*, 53 Cal.4th at 1040.

Moreover, when time records show short, missed, and late meal periods, there is a presumption that an employer violated California's meal period requirements. *See Donohue v. AMN Services, LLC*, 11 Cal.5th 58, 78 (2021) (“If time records show noncompliant meal periods, then a rebuttable presumption of liability arises.”)

Plaintiffs contend that Defendant's meal period practices are unlawful under California

1 law. **First**, Plaintiffs allege that Defendant misclassified certain commission-based employees,
2 so duty-free meal periods were not offered to them, and they were not able to take such meal
3 periods. **Second**, Plaintiffs allege that because Defendant fails to maintain accurate and
4 complete documentation regarding Plaintiffs' and other class members' meal periods, there is a
5 prima facie violation of the Wage Orders. As such, it is presumed that Plaintiffs and the class
6 members were not relieved of duty and no meal periods were provided. *See Brinker, supra*, 53
7 Cal.4th at 1053 (conc. opn. of Werdegar, J.) **Third**, Plaintiffs and the class members aver that
8 they were never provided uninterrupted, duty-free meal periods, because of the time constraints
9 Defendant placed upon Plaintiffs' and class members' work.

10 Defendant contends that Plaintiffs and class members had the ability and in fact did take
11 meal periods, and that if they did not, it was their own choice, and therefore not actionable.
12 Defendant further contends that it has time records showing such meal periods.

13 Class Counsel and their expert calculated the maximum verdict value of the meal break
14 claim to be approximately \$852,000. This calculation is based on the assumption that each late,
15 missed or short meal period was the result of Defendant's interference with Plaintiffs' and the
16 class members abilities to take duty-free meal periods. Accordingly, Class Counsel and their
17 expert determined a total violation rate for the class members, and average rate of pay based on
18 the payroll data for the class. Based on discussions with Plaintiffs and interviews of other class
19 members, and the defenses raised, Plaintiffs believe they had a ten percent probability of
20 recovering all of these damages. Accordingly, Plaintiffs contend the reasonable exposure of the
21 meal break claim is approximately **\$85,200**.

22
23 b. Rest period liability and damages

24 Section 12(A) of the IWC Wage Order(s) states: "Every employer shall authorize and
25 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
26 each work period. The authorized rest period time shall be based on the total hours worked daily
27 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However,
28

1 a rest period need not be authorized for employees whose total daily work time is less than three
2 and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which
3 there shall be no deduction from wages.”

4 Section 12(B) of the IWC Wage Order(s) states: “If an employer fails to provide an
5 employee a rest period in accordance with the applicable provisions of this order, the employer
6 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
7 workday that the rest period is not provided.” Moreover, during rest periods, “employees must
8 not only be relieved of work duties, but also be freed from employer control over how they spend
9 their time.” *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.5th 257, 270 (2016). Further, when an
10 employer adopts common policies that prevent employees from taking their rest breaks, it presents
11 a common factual issue by which liability may follow. *See Jaimez v. Daijhs USA, Inc.*, 181
12 Cal.App.4th 1286, 1304 (2010). Indeed, “[t]he wage orders and governing statute do not
13 countenance an employer’s exerting coercion against the taking of, creating incentives to forego,
14 or otherwise encouraging the skipping of legally protected breaks.” *Brinker, supra*, 53 Cal.4th at
15 1040.
16

17 Here, Plaintiffs contend that Defendant’s commission plans do not separately compensate
18 Plaintiffs for their rest periods. As such, Defendant fails to account for such rest periods, which
19 are effectively uncompensated. Thus, Plaintiffs contend that Defendant’s compensation system
20 runs afoul of California law, including but not limited to the holdings in *Bluford v. Safeway, Inc.*,
21 216 Cal.App.4th 864, 871-872 (2013) and *Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th
22 98, 110-111 (2017). Plaintiffs further allege that Defendant restricted other class members from
23 going offsite during their rest periods, thus they were not free from Defendant’s control. *Cf.*
24 *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 270 (2016).

25 Defendant contends that its rest period policies were lawful and appropriate, and that all
26 class members were afforded ample time to take duty-free rest periods throughout their work day.

27 Based on discussions with Plaintiffs and interviews of other class members, Class Counsel
28

1 assumed a 50% violation rate for all shifts by class members of 3.5 hours or more. Based on that
2 assumption, Plaintiffs' expert calculated total violations across the class, multiplied by an average
3 rate of pay for the class members. As such, Class Counsel and their expert calculated the maximum
4 verdict value of the rest period claims to be approximately \$940,000. Based on the difficulty of
5 proving rest period violations on a classwide basis, and the lack of objective evidence proving such
6 violations, Plaintiffs believe they had a five percent chance of recovering all of the rest period
7 damages. As such, Plaintiffs believe the reasonable exposure of the rest break claim is
8 approximately **\$47,000**.

9 **3. Waiting Time Penalty**

10 The waiting time penalty claim is purely derivative. Plaintiffs and their expert analyzed
11 the data to find that there are approximately 78 former employees included in the putative class
12 that would be eligible for the Labor Code §203 penalties. Plaintiffs and their expert calculated
13 the reasonable exposure of this claim at approximately \$795,000. The Plaintiffs further
14 discounted the waiting time penalty claim based on risk and the fact that waiting time penalties
15 are not awarded if a good faith dispute exists as to whether the wages were owing. Further, the
16 class would have the burden of proving a "willful" withholding of wages. Plaintiffs considered
17 that under Labor Code §203 there is only a penalty if "an employer willfully fails to pay" all
18 wages due to an employee upon separation. Willfulness does not exist if there is a "good faith
19 dispute," in fact or law that wages were due, even if the employer's reasoning ultimately proves
20 incorrect. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1204; 8 Cal. Code Regs. §
21 13520 ("A 'good faith dispute' that any wages are due occurs when an employer presents a
22 defense, based in law or fact which, if successful, would preclude any recover on the part of the
23 employee. The fact that a defense is ultimately unsuccessful will not preclude a finding that a
24 good faith dispute did exist.")

25
26 Once Plaintiffs determined the maximum reasonable exposure of the claim, Plaintiffs
27 placed a settlement value of **\$79,500** or approximately ten percent of the reasonable exposure
28

1 value, based upon the above discounts applied to the reasonable value of the claim.

2 **4. Paystub**

3 As to the paystub penalty, which is derivative of the other claims identified above, the
4 Plaintiffs and their expert arrived at a maximum reasonable exposure of this claim of
5 approximately \$159,000. This figure was arrived at by assuming that each wage statement that
6 was provided to the class members violated LC §226.

7 Defendant argues that, even assuming there are any violations, which they deny, the fact
8 that derivative violations were minor and that the Defendant had presented evidence of a good
9 faith dispute as to any violation. Hurst v. Buczek Enters., LLC (N.D. Cal. 2012) 870 F.Supp.2d
10 810, 829 (no section 226 violation where the employer "makes a good faith claim" in its
11 defense); Harris v. Vector Mktg. Corp. (2009) 656 F.Supp.2d 1128, 1146 (N.D. Cal. 2009) (the
12 "employer did not knowingly and intentionally fail to provide itemized wage statements" where
13 there was a "good faith dispute").
14

15 Based on the raised defenses, as well as the risk of certification and related risks of
16 proving all violations, Plaintiffs have placed a reasonable settlement value of **\$15,900** or ten
17 percent of the reasonable exposure of the pay stub claim.

18 **5. PAGA**

19 Plaintiffs contend that PAGA penalties are owed based on the numerous alleged Labor
20 Code violations identified above. Once a PAGA violation is found, a court must award civil
21 penalties. See Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1211-1213.

22 Nevertheless, a court has discretion to reduce the award of civil penalties if it finds that "based
23 on the facts and circumstances of the particular case, to do otherwise would result in an award
24 that is unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code § 2699(e)(2).

25 Significantly, moreover, because the law is unsettled in many areas of the law alleged by
26 Plaintiffs herein, there is a very real possibility that a court would substantially reduce the
27 penalties, even if they are proven. See, e.g., Fleming v. Covidien, Inc., 2011 WL 7563047, *3-4
28

(C.D. Cal. 2011) (reducing penalties from \$2.8 million to \$500,000 based on wage statement violations because to assess full penalties would be unjust and arbitrary); Thurman v. Bayshore Transit Mgmt., Inc., 203 Cal.App.4th 1112, 1134 (2012) (reduction of PAGA penalties by 30% affirmed on appeal).

Plaintiffs and their expert calculated the reasonable PAGA penalties to be valued at \$942,000 based on this being an initial violation against Defendant. Plaintiffs believe the few cases that reported a PAGA trial that the discretionary penalties are discounted by approximately 75%-85%. Based on the uncertainty of recovery on several of Plaintiffs' legal theories, Plaintiffs believe the PAGA claim's reasonable value is ten percent of the total value, or approximately **\$94,000**.

6. Reimbursement Claim

California Labor Code section 2802(a) provides:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Plaintiffs contend that Defendant failed to comply with California's reimbursement requirements by failing to adequately reimburse Plaintiffs and the class members for using their personal cell phones while working for Defendant, along with incurring other expenses and purchasing other tools for business purposes. See Cochran v. Schwan's Home Serv., Inc., 228 Cal. App. 4th 1137 (2014).

In Cochran, the court stated: "The threshold question in this case is this: Does an employer always have to reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in which

1 the employee incurred an extra expense that he or she would not have otherwise incurred absent
2 the job? The answer is that reimbursement is always required. Otherwise, the employer would
3 receive a windfall because it would be passing its operating expenses on to the employee. Thus,
4 to be in compliance with section 2802, the employer must pay some reasonable percentage of the
5 employee's cell phone bill.” Id. at 1144.

6 Defendant contends that it paid for all reasonable and necessary expenses incurred by
7 Plaintiffs and class members, and that the reimbursement claim has little to no value.

8 Plaintiffs contend that this claim is valued at \$200,000.00 based upon average cell phone
9 usage and failure to reimburse class members for their monthly usage while at work, along with
10 an analysis of other expenses incurred by Plaintiffs. Given the fact that there are individualized
11 issues in proving reimbursement violations and damages, Plaintiffs believe this claim’s
12 reasonable value is **\$20,000**, or ten percent of the total value.

13
14 **7. Total Damage Exposure²**

15 Plaintiffs believe that the \$225,000 settlement achieved in this case is very good for the
16 class members. Based upon a reasonable exposure value of \$451,600, the settlement represents
17 approximately 50% of that total value. Given the many defenses raised, the uncertainty of the
18 certifiability of any class, and the risks of going to trial, Class Counsel believe this settlement is
19 an excellent result for all of the class members.

20 **G. All Class Members Have Received Proper Notice of the Settlement**

21 Pursuant to the Court’s Preliminary Approval Order dated February 21, 2024, the Court
22 Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval,
23 Objection Form, and Exclusion Form, were sent out to all 142 Class Members via first-class mail
24

25
26
27 ² The Unfair Competition claim is subsumed into the Kullar analysis above. The
28 Unfair Competition claim is based upon the wage and hour violations, and adds an extra year of
damages, and is included within the above analysis.

1 by Claims Administrator Phoenix on April 10, 2024 (*See* Salinas Decl., ¶ 5, and Ex. A thereto.)
2 Prior to this date, the name, last known address, and social security number of each Class
3 Member were provided by Defendant through a review of its personnel files. Upon its receipt of
4 the Class Member contact information, Phoenix accessed the National Change of Address
5 (“NCOA”) database and updated the addresses provided by Defendant. (Salinas Decl. ¶ 4.)

6 As of the date of the filing of this motion, all of the Class Notice Packets have been
7 delivered successfully. (Salinas Decl., ¶¶ 6-7.) Further, not a single Class Member has objected
8 to the settlement and no Class Members have requested exclusion from the settlement. (Salinas
9 Decl., ¶¶ 8-9.)

10 **IV. PLAINTIFFS’ REQUESTED ATTORNEYS’ FEES ARE APPROPRIATE AND**
11 **JUSTIFIED**

12
13 **A. Fees Can Be Awarded As A Percentage of the Common Fund**

14 When a common fund is created, attorneys who secured the fund are entitled to a
15 percentage of the fund. (*See Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 [“the
16 court may determine the amount of a reasonable fee by choosing an appropriate percentage of
17 the fund created]; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 26 [“percentage fees
18 have traditionally been allowed in . . . common fund cases”]). Plaintiffs’ request for one-third of
19 the common fund is reasonable, falls within the Ninth Circuit’s historical benchmark for
20 attorneys fees of 25% to 50% of a common fund, and is fair compensation for undertaking
21 complex litigation on a contingent basis. (*See, e.g.,* Rubinstein, Conte and Newberg, Newberg
22 on Class Actions at § 14:6 [surveying cases, and finding that 30-50% of fees awarded in cases in
23 which the common fund is relatively small]; see also *In re Ampicillin Antitrust Litigation*
24 (D.D.C. 1981) 526 F.Supp. 494 [court approved attorney fee award equal to 45% of the
settlement fund].)

25 Under the common fund doctrine, “a litigant or a lawyer who recovers a common fund
26 for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee
27 from the fund as a whole.” (*Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 [100 S.Ct. 745,
28 750, 62 L.Ed.2d 676].) The Supreme Court explained:

1 The doctrine rests on the perception that persons who obtain the benefit of a
2 lawsuit without contributing to its cost are unjustly enriched at the successful
3 litigant's expense. Jurisdiction over the fund involved in litigation allows a court
4 to prevent this inequity by assessing attorney's fees against the entire fund, thus
spreading fees proportionately among those benefitted by the suit. (Citations
omitted.)

5 (*Id.*; see also *Laffitte, supra*, 1 Cal.5th at 503 ["the percentage method is a valuable tool that
6 should not be denied our trial courts"]; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 ["one who
7 expends attorneys' fees in winning a suit which creates a fund from which other derive benefits,
8 may require those passive beneficiaries to bear a fair share of the litigation costs"].)

9 Class counsel seeks an award of attorneys' fees of \$75,000, or one-third of the settlement.
10 Class counsel's fee is eminently reasonable here. Class counsel achieved a very good result for
11 all class members, who will all be entitled to receive their share of the settlement according to
their workweeks during the class period.

12 **B. Plaintiffs' Attorneys' Fees Are Also Recoverable Under The Lodestar**
13 **Approach**

14 Fees in class cases are also appropriate under the lodestar method, whereby the number
15 of hours reasonably expended is multiplied by a reasonable hourly rate. (*See Lealao, supra*, 82
16 Cal.App.4th at 26.) Indeed, pursuant to the California Supreme Court's seminal *Laffitte*
17 decision: "The choice of a fee calculation method is generally one within the discretion of the
18 trial court, the goal under either the percentage or lodestar approach being the award of a
19 reasonable fee to compensate counsel for their efforts." *Laffitte, supra*, 1 Cal.5th at 504. "The
20 lodestar method better accounts for the amount of work done, while the percentage of the fund
21 method more accurately reflects the results achieved." *Id.* (quoting *Rawlings v. Prudential-*
22 *Bache Properties, Inc.*, 9 F.3d 513, 516(6th Cir. 1993)). Thus, this Court has the discretion to
23 award Plaintiffs' attorneys based on the reasonable value of their services in this case. *See*
24 *Newberg, supra*, §15:67 (finding that between 1993-2007, approximately 10% of courts solely
use the lodestar approach in common fund cases).

25 In evaluating the lodestar, and whether an adjustment is appropriate, courts look to the
26 qualifications of counsel, the reasonableness of the rates charged, the novelty and difficulty of
27 the case, the contingent nature of the case, the results achieved, and related matters. (*See, e.g.*,
28

1 *Serrano, supra*, 20 Cal.3d 25, 49; *see also Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 321-
2 322.) All such factors support the fee award here.

3 **1. Class Counsel Are Well-Qualified To Represent This Class**
4 **And Their Rates Are Reasonable**

5 Class counsel are experienced employment lawyers, and have extensive experience in the
6 specific subcategory of wage and hour claims. Class counsel's rates are all within reasonable
7 market rates in Southern California, and wage and hour class action attorneys. (*See* Bartz Decl.,
8 ¶¶ 13-16; Haines Decl., ¶ 2.)

9 **2. Each Class Counsel's Lodestar Is Well Documented**

10 A properly supported motion for attorney's fees is prima facie evidence that the expenses
11 and services were necessarily incurred. (*Hadley v. Krepel* (1985) 167 Cal.App.3d 677, 682.)
12 Class counsel here provide appropriately detailed declarations and detailed, contemporaneous
13 billing statements in support of the lodestar amounts. (Bartz Decl., Ex. 5; Haines Decl., ¶¶ 6-7).
14 Class Counsel's lodestar is more than \$104,347. As such, Plaintiffs' requested attorneys' fees
15 here are less than the amount incurred to secure the result for the class.

16 **3. Novelty And Difficulty Of The Case**

17 This case raised potentially novel and difficult issues of proof based on Plaintiffs'
18 allegations. For instance, Defendant's records were incomplete, forcing Class Counsel to
19 interview witnesses to support the claims. Defendant further contended that certain exemptions
20 applied with respect to its pay policies. Plaintiffs aggressively argued to the contrary and believe
21 that the resulting settlement benefitted from Plaintiffs' dedication and persistence.

22 **4. Class Counsel Worked Efficiently And Skillfully**

23 From the outset, Class Counsel pursued this case to achieve an efficient result. Class
24 Counsel agreed to participate in an early mediation, and obtained the informal discovery
25 necessary to prove Plaintiffs' claims.

26 **5. Class Counsel Worked Entirely On A Contingency Basis**

27 Class Counsel worked on a complete contingency and advanced all expenses and costs.
28 The contingent risk included liability issues and damage issues. According to the California
Supreme Court:

A contingent fee must be higher than a fee for the same legal services paid as they
are performed. The contingent fee compensates the lawyer not only for the legal
services he renders but for the loan of those services. The implicit interest rate on

1 such a loan is higher because the risk of default (the loss of the case, which
2 cancels the debt of the client to the lawyer) is much higher than that of
conventional loans.

3 (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133, quoting Posner, *Economic Analysis of*
4 *Law* (4th ed. 1992) pp. 534, 567.) The amount sought in fees here, \$75,000 represents
5 approximately 72% of the total fees incurred in this case. This represents a negative lodestar
6 adjustment of 1.39. Thus, it is undeniable that Plaintiffs' attorneys are deserving of the amount
7 requested to prosecute this case.

8 **6. Class Counsel Achieved Very Good Results**

9 Class Counsel obtained a \$225,000 settlement, whereby every one of the class members
10 will receive a check, with no reversion to the Defendant. Not one class member objected to the
11 settlement, and no class members have excluded themselves from the class. Those numbers are
a testament to the strength of the settlement achieved in this case.

12 Because Plaintiffs' attorneys achieved an excellent result for the class members in this
13 case, Class counsel respectfully requests attorneys' fees of \$75,000.

14 **V. PLAINTIFFS' COSTS AND THE CLASS ADMINISTRATOR EXPENSES** 15 **SHOULD BE APPROVED**

16 Moreover, Class Counsel seeks costs of \$8,414, plus class administrator expenses of
17 \$6,043.17, which Defendant has agreed to pay out of the settlement amount. All such costs, as
18 well as the class administrator's expenses to oversee the class notice procedure and remit the
19 settlement fund to the class, are reasonably necessary in prosecuting this action. (Bartz Decl. ¶
20 23, and Ex. 6 thereto.)

21 **VI. THE ENHANCEMENT AWARDS FOR THE CLASS REPRESENTATIVES** 22 **ARE FAIR AND REASONABLE**

23 The proposed service awards for the class representatives are intended to recognize their
24 initiative, risks, and efforts on behalf of the Settlement Class. Courts routinely approve class
25 representative service payments, also known as incentive awards, to compensate named plaintiffs
26 for the services they provide and the risks they incur during class action litigation. *See In re*
27 *Cellphone Fee Termination Cases*, 186 Cal. App. 4th 1380, 1393 (2010); *see also Bell v.*
28 *Farmers Ins. Exch.*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named
plaintiffs for efforts in bringing the case); *Manual for Complex Litigation*, § 21.62, fn. 971

1 (noting that such awards “may sometimes be warranted for time spent meeting with Class
2 Members, monitoring cases, or responding to discovery”). “An incentive award may be
3 appropriate to induce someone to serve as a class representative. In determining whether to make
4 an incentive award, the court may consider (1) the risk, both financial and otherwise, the class
5 representative faced in bringing the suit; (2) the notoriety and personal difficulties encountered
6 by the class representative; (3) the amount of time and effort spent by the class representative;
7 (4) the duration of the litigation; and (5) the personal benefit received by the class representative
8 as a result of the litigation.” *Golba v. Dick’s Sporting Goods, Inc.*, 238 Cal.App.4th 1251, 1272
(2015).

9 In this litigation, class representatives testify to their risks, their time and effort incurred,
10 the adverse consequences suffered, and the benefits received in this case. (*See generally*, Lloyd
11 and Alvarado Decls.) In addition, class representatives are required to execute a general release
12 of all claims against Defendant, which includes a waiver of unknown claims and their rights
13 under California Civil Code § 1542. For all of these reasons, the requested service payments of
14 \$7,500 for Plaintiffs Randy Lloyd and Eddie Alvarado are appropriate and justified.

15 **VII. CONCLUSION**

16 Based on the foregoing, Plaintiffs respectfully request that this Court issue an Order and
17 Judgment approving the Settlement, and grant Plaintiffs’ attorneys’ fees and costs, Phoenix’s
18 administrative expenses, and Plaintiffs’ enhancement awards.

19 Dated: June 12, 2024

BARTZ LAW GROUP, APC

21 //Aaron Bartz//

22 Aaron A. Bartz

23 Attorneys for Plaintiffs RANDY LLOYD and
24 EDDIE ALVARADO and all others similarly
25 situated
26
27
28